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February 16, 2024

By ECF

The Honorable Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street, Chambers 533
White Plains, NY 10601-4150

Re: *Glover v. Grimaldi, et al., S.D.N.Y. No. 23-cv-5019*

Dear Judge Karas:

This Office represents defendants Carolyn Grimaldi and Mindy Jeng (“Individual Defendants”), attorneys employed by the New York State Office of Court Administration, the administrative office of the State’s Unified Court System (“UCS”). The Individual Defendants respectfully request thirty days from the Second Amended Complaint’s (“SAC”) eventual filing to make their proposed motion to dismiss, consistent with the Court’s January 9, 2024 Memo Endorsement Order. (ECF 29). In addition, we respectfully request that the February 20, 2024 deadline to respond to the pleadings imposed on the Vaccine Exemption Review Committee defendants (“VEC Defendants”) ¹ be stayed, as Plaintiff’s filings on February 14, 2024 (ECF 30-31, 33-34, 36, 38-40) allege improper initial service of the Summons and SAC as detailed below.

The Individual Defendants request thirty days to dismiss the SAC from its service and filing, consistent with the Court’s Order.² (ECF 29). However, despite the Court imposed January 30, 2024 deadline for filing, the SAC has not yet appeared on the docket. Id. Moreover, on January 29, 2024, a version of the SAC with different claims, including federal and pendent state claims, than those in the Proposed Second Amended Complaint filed by Plaintiff on December 28, 2023 (ECF 27) was served on the Individual Defendants. This discrepancy, coupled with no version of the operative SAC appearing on the docket yet, leaves Individual Defendants uncertain of what claims they should respond to. Plaintiff represented to us on February 14, 2024 that she believed she had already submitted the operative SAC for filing to the Pro Se Office, and stated that she would follow up with them to ensure they upload it to the

¹ The VEC Defendants are Scott Murphy, Rosemary Martinez-Borges, Linda Dunlap-Miller, Shawn Kerby, Dan Weitz, Nancy J. Barry, Justin Barry, Jennifer DiLallo, and Keith Miller.

² Individual Defendants proceed on the assumption that the Court’s Order (ECF 29) allotting thirty days from the SAC’s filing to make their motion to dismiss supersedes the recently generated deadline of February 20, 2024 to answer the SAC. (ECF 32, 35).

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electronic docket as soon as possible. Once the operative SAC is electronically filed clarifying the operative pleading and the claims asserted therein, the Individual Defendants intend to make their motion consistent with the Court's mandate.

Regarding the VEC Defendants, the Affidavits of Service filed on February 14, 2024 allege initial service of the Summons and SAC on the VEC Defendants at "28 Liberty Street, New York, NY, 10005," which is the State of New York Office of the Attorney General. (ECF 30-31, 33-34, 36, 38-40). This does not constitute proper service under Fed. R. Civ. P. 4(e). While no assessment of representation has been made for these defendants, pursuant to Public Officers Law § 17(2)(c), the Attorney General has a duty to "take the necessary steps...to avoid entry of a default judgment [against a state employee] pending resolution of any question pertaining to the obligation to provide for a defense." N.Y. Pub. Off. Law § 17(2)(c). Therefore, we respectfully request that the February 20, 2024 deadline to respond that appears on the docket for these defendants be stayed. We spoke to Plaintiff on February 14, 2024, and she represented that proper service will be effectuated imminently.³ Once Plaintiff properly completes service, we will make representation assessments for the VEC Defendants, and respectfully request that their response deadlines be set to correspond to the motion deadline for the Individual Defendants, so that all State Defendants can move for relief in the same briefing.

Thank you for your consideration.

Respectfully submitted,

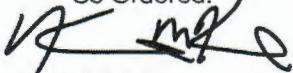
/s/ Stephanie Costa

Stephanie Costa
Assistant Attorney General

cc: Plaintiff pro se Tamara Glover, via email and U.S. mail

Both requests are granted. The Clerk is asked to mail a copy of this document to Plaintiff.

So Ordered.



2/19/24

³ Upon information and belief, on or about February 15, 2024, Nancy J. Barry, Keith Miller, Dan Weitz, Shawn Kerby, and Linda Dunlap-Miller were served with the Summons and Second Amended Complaint at their places of business.